REMARKS

Claims 1-7, 9, 10, 14 and 15 are all the claims pending in the present application, new claims 14 and 15 having been added as indicated herein. In summary, the Examiner maintains some of the previous rejections of the pending claims, and adds a few new arguments in the *Response to Arguments* section of the present Office Action. Specifically, claims 1-3, 5-7, and 9-10 remain rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Nelson et al. (US Patent No 5,568,641). Claims 1 and 4-6 remain rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Mitsui, Hitoshi (JP 2001117780 A), hereinafter referred as Mitsui. Claims 1 and 4-6 remain rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Matsui et al. (JP 09138769 A). Claims 1-3, 5-7, and 9-10 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Takeo, Kazunouri (JP 10105407 A) hereinafter referred to as Takeo. Finally, claim 4 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nelson and further in view of Kurihara, Nobumasa, (JP 411328040 A), hereinafter referred to as Kurihara.

§102(b) Rejections (Nelson) - Claims 1-3, 5-7, and 9-10

The Examiner rejects claims 1-3, 5-7, and 9-10 for the reasons set forth on pages 2-4 of the present Office Action, and adds new arguments in the R*esponse to Arguments* section of the present Office Action.

With respect to independent claim 1, in the previous Amendment, it was argued that Nelson does not teach or suggest at least, "a second memory for storing information transferred through the network," as recited in claim 1. See page 7, second full paragraph, of Amendment

dated March 15, 2005. In response, in the *Response to Arguments* section, on page 11, of the present Office Action, the Examiner alleges:

> In response to applicant's statement of "However, assuming, arguendo, Nelson discloses an upgrade involving new firmware, nowhere does Nelson even mention a second memory, constituting a network device, for storing information transferred through the network." Nelson disclosed 'upgrade firmware by downloading the code to the EEPROM" (column 1, line 35-column 2, line 4) and "After the primary boot block 0 is erased 75, it is subsequently upgraded (burned and/or written to) with new boot firmware 80." (column 5, line 44-47). It proves that the new firmware information must be held in a memory place. Since the EEPROM per Nelson is intended to hold boot image per Nelson (column 5, line 58-column 6, line 61) the new firmware information must be held in a separate memory place other than in EEPROM. It is well known to a person of ordinary skill in the art at the time, a device with processor does not only have an EEPROM. It must have other memory means for processor execution.

In response, Applicant submits that it is not disputed that Nelson teaches that new firmware information is held in a different location of a memory, however nowhere does Nelson disclose a separate second memory that is distinct from the first memory. As shown in Fig. 1B of Nelson, for example, the operations of the invention thereof take place in a single memory 10, however nowhere does Nelson teach or suggest a second memory, separate from the first memory, that stores information transferred through the network. At most, Nelson only describes a particular area of a first memory where information transferred through a network is stored, however this does not satisfy the above-quoted feature of claim 1. Therefore, Applicant maintains that Nelson does not anticipate claim 1.

Further, with respect to claim 1, in the previous Amendment, it was argued that Nelson does not teach or suggest the specific operations of the decoder that is recited in claim 1. In the

present Office Action, the Examiner notes, and Applicant acknowledges, that Fig. 1A of Nelson does show a box that represent a component that may perform a decoding function. However, nowhere do the figures nor the text of Nelson indicate that the "decode" box performs the specific claimed operations of "selecting either the first memory or the second memory, which is used for upgrading the software, according to a control signal received from the controller and a result of monitoring received from the monitoring means, and setting an address," as recited in claim 1. Therefore, Applicant maintains that claim 1 is not anticipated by Nelson.

At least based on the foregoing, Applicant maintains that independent claim 1 is patentably distinguishable over Nelson. With respect to dependent claims 2, 3, 5 and 6, Applicant maintains that these claims are patentable at least by virtue of their dependency from independent claim 1.

Further, with respect to claim 2, since Nelson clearly does not disclose the claimed second memory, Nelson does not teach copying, "the information stored in the second memory to the original area of the first memory," as recited in claim 2.

Applicant maintains that independent claims 7 and 9 are patentable at least for reasons similar to those set forth above with respect to claim 1. *See arguments above with respect to claim 1.*

With respect to dependent claim 10, in the previous Amendment, it was argued that Nelson does not teach or suggest at least, "wherein the at least one failure is a failure in the network device which is checked during the erasing and storing steps," as recited in claim 10. In response, the Examiner alleges (in numbered paragraph 15):

> In response to applicant's statement with respect independent claim 10, Nelson disclosed Returning again to FIG. 2, after the nvmebit is set 70, the primary boot block 0 is erased 75. After the primary boot block is erased, if a disruptive event of powerfail were to occur, the upgrade could not be completed if block 2 were not addressable as an alternate boot block by processor 20.: It is also well known to a person of ordinary skill in the art at the time that a device designer would have to consider a faulty condition, especially a powerfail or any other disruptive event, including a network fail, e. g. during download per Nelson's teaching.

In response, Applicant submits that even if, *arguendo*, Nelson discloses that failures in network devices are checked, Nelson does not disclose that such checking occurs during the erasing and storing steps. The Examiner obviously utilizes impermissible hindsight reasoning in concluding, without support in any reference, that a device designer would have provided the features of claim 10 in the invention of Nelson.

At least based on the foregoing arguments, Applicant maintains that claims 1-3, 5-7, and 9-10 are patentable over Nelson.

§102(a) Rejections (Mitsui) - Claims 1 and 4-6

With respect to independent claim 1 over Mitsui, it was previously argued that the abstract of Mitsui clearly does not satisfy each and ever limitation of claim 1, and therefore Mitsui does not anticipate claim 1. For example, it was argued that Mitsui does not even mention in the abstract, "a second memory for storing information transferred through the network," as recited in claim 1. In the present Office Action, in numbered paragraph 17, the Examiner alleges, "In response to applicants statements with respect to Mitsui, Matsui and Takeo, the applied arts are read per their teaching, not word by word. The action does map the teaching to the claimed invention as above."

In response, Applicant maintains that the Examiner still has not demonstrated that Mitsui teaches each and every limitation set forth in claim 1. Applicant also maintains that Mitsui does not teach each and every one of the limitations set forth in claims 4-6, and that the Examiner utilizes impermissible hindsight reasoning in concluding that the mere Abstract of Mitsui supports the rejections of claims 4-6.

§102(b) Rejections (Matsui) - Claims 1 and 4-6

Applicant maintains that claims 1 and 4-6 are patentable over Matsui for reasons similar to those set forth above with respect to applied reference Mitsui.

§102(b) Rejections (Takeo) - Claims 1-3, 5-7, and 9-10

With respect to the rejections over Takeo, Applicant maintains the arguments set forth in the previous Amendment. Specifically, Applicant maintains the arguments set forth on pages 11 and 12 with respect to Takeo.

§103(a) Rejections (Nelson/Kurihara) - Claims 4

The Examiner rejects claim 4 over Nelson and Kurihara for the reasons set forth on pages 9-10 of the present Office Action. Applicant submits that claim 4 is patentable at least by virtue of its dependency from independent claim 1. Kurihara does not make up for the deficiency of Nelson.

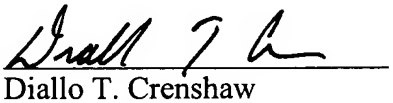
Finally, Applicant adds new claims 14 and 15 to provide a varying scope of coverage. Applicant submits that these new claims are patentable at least by virtue of their respective dependencies and that these new claims should be entered.

As always, we welcome any additional comments you and/or Applicant may have on the technical differences between the claimed invention and the applied references.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Diallo T. Crenshaw
Registration No. 52,778

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: September 15, 2005